

1 Honorable Timothy W. Dore
2 Chapter 13
3 Hearing Date: n/a (Ex Parte)
4 Location: n/a (Ex Parte)
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8 IN THE UNITED STATES BANKRUPTCY COURT
9 WESTERN DISTRICT OF WASHINGTON AT SEATTLE
10

11 In re
12

13 ZELLER, Keith M. & Courtney M.
14

15 Debtors.
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17 ZELLER Keith M. & Courtney M.,
18

19 Plaintiffs,
20 v.
21

22 UNITED STATES OF AMERICA ACTING
23 THROUGH THE U.S. DEPARTMENT OF
24 EDUCATION,
25

26 Defendant.
27

Case No.: 18-12006-TWD
28

Adv. No: 23-01009
29

30 **EX PARTE JOINT MOTION FOR
31 ENTRY OF CONSENT JUDGMENT
32 DECLARING STUDENT LOAN DEBT
33 PARTIALLY DISCHARGEABLE**

34 Under Local Bankruptcy Rule 9013-1(g), Plaintiffs Keith M. Zeller & Courtney M.
35 Zeller (Plaintiffs) and Defendant United States Department of Education (DOE), jointly move ex
36 parte to resolve this adversary proceeding with a Consent Judgment declares dischargeable a
37 portion of Plaintiffs' student loan debt, as described in the Certificate of Indebtedness attached
38 hereto as Exhibit A (the Debt). The Debt should be declared partially dischargeable in the
39 amount of \$65,128.18 under 11 U.S.C. § 523(a)(8) because repaying that portion of the Debt
40 would be an "undue hardship," as interpreted by the Ninth Circuit. *E.g., Educ. Credit Mgmt.
41 Corp. v. Nys (In re Nys)*, 446 F.3d 938, 941, n.1 (9th Cir. 2006) (summarizing three-prong
42 *Brunner* test adopted by Ninth Circuit). The parties stipulate to the following facts that support
43 that conclusion:

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46 EX PARTE JOINT MOTION FOR ENTRY OF CONSENT
47 JUDGMENT DECLARING STUDENT LOAN DEBT PARTIALLY
48 DISCHARGEABLE, *Zeller v. Dept. of Educ.*, No. A23-01009 - 1
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1 1. Plaintiffs are making monthly payments under a confirmed Chapter 13 Plan in
2 Case No. B18-12006-TWD. They anticipate receiving a general discharge under 11 U.S.C.
3 § 1328 upon completion of their Plan.

4 2. In November 2022, the United States Department of Justice, in coordination with
5 DOE, issued “Guidance for Department Attorneys Regarding Student Loan Bankruptcy
6 Litigation” (Guidance), *available at: <https://www.justice.gov/civil/page/file/1552681/download>*
7 (last visited Jun. 21, 2023). Pursuant to that Guidance, Plaintiffs submitted to DOE an
8 Attestation in Support of Request for Stipulation Conceding Dischargeability of Student Loans
9 (Attestation). The following facts and conclusions are drawn from information Plaintiffs
10 provided in their Attestation.

11 3. Plaintiffs cannot maintain a minimal standard of living and fully repay the Debt.
12 The IRS National and Local Standards for necessary living expenses, plus taxes, childcare, and
13 health insurance costs, leave Plaintiffs with sufficient funds to pay only about 25 percent of their
14 standard monthly student loan payment of \$2,462. Further, Plaintiffs are ages 36 and 42 and in
15 the middle of their careers; their income will not likely increase significantly.

16 4. Plaintiffs present inability to repay the Debt in full will likely persist for a
17 significant portion of the Debt’s repayment period. Under the Guidance, Plaintiffs qualify for a
18 presumption that their inability to repay the Debt fully will persist as to those student loans that
19 have been in repayment status for more than 10 years. Those loans comprise \$65,128 of the
20 present balance of the Debt.¹

21 5. Plaintiffs have made a good faith effort to repay the Debt. Under the Guidance,
22 Plaintiffs qualify for several presumptions of good faith:

23 • made \$18,707 in payments towards the Debt;
24 • requested multiple forbearances or deferments;

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1¹ These loans are some of the underlying loans that Plaintiffs consolidated in 2014.

1 • applied for, and were enrolled in, an income-based repayment plan when their
2 bankruptcy case commenced in 2018;
3 • attempted to contact their loan servicer dozens of times.

4 6. Plaintiffs do not have assets available to repay the Debt in full. Their home equity
5 is fully protected by Washington State's homestead exemption. Their vehicles are a 2016
6 Hyundai and 2017 Ford Fiesta, each valued around \$7,000. Plaintiffs own the corporation
7 through which Mrs. Zeller operates her solo acupuncture practice. Selling the corporation is not
8 a viable means to repay the Debt because it provides Mrs. Zeller's employment and wages.

9 7. Entry of the requested Consent Judgment declaring presently dischargeable a
10 portion of the Debt in this adversary proceeding shall not prejudice or prevent entry of a
11 judgment in a future adversary proceeding seeking to discharge additional amounts of the Debt.

12 8. Plaintiffs and DOE shall bear their own costs and attorney fees related to this
13 action.

14 For the foregoing reasons, repaying the Debt in full would impose an "undue hardship"
15 on Plaintiffs. The parties jointly request that the Court enter the "Ex Parte Consent Judgment
16 Declaring Student Loan Debt Partially Dischargeable" to the extent of \$65,128.00, under 11
17 U.S.C. § 523(a)(8).

18 DATED this 22nd day of June 2023.

Respectfully submitted,

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